

AMENDED IN ASSEMBLY APRIL 10, 2003

CALIFORNIA LEGISLATURE—2003–04 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1418**

**Introduced by Assembly Member Laird**

February 21, 2003

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~~An act to amend Section 1773.2 of the Labor Code, relating to public works.~~ *An act to amend Section 27 of the Business and Professions Code, and to amend Section 1775 of the Labor Code, relating to labor.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1418, as amended, Laird. ~~Public works: prevailing wage Labor: violations.~~

*Existing law requires various boards in the Department of Consumer Affairs to provide information concerning the status of licensees on the Internet.*

*This bill would additionally require the Contractors' State License Board to disclose information regarding a licensee's willful or deliberate violation of the Labor Code.*

*Existing law generally requires that not less than the general prevailing rate of per diem wages, as specified, be paid to workers employed on a public work, as defined, that costs over \$1,000. Existing law requires a contractor or subcontractor to submit, to the state or political subdivision on whose behalf a public work is being performed, a penalty of not more than \$50 per day, as provided and determined by the Labor Commissioner, for violations of these prevailing wage provisions.*

*This bill would require that, in addition to the \$50 maximum penalty per day, the penalty be not less than \$10 per day, and would require the*

*penalty be not less than \$20 per day for contractors and subcontractors with prior violations, and not less than \$30 per day for willful or deliberate violations.*

~~Existing law requires the body awarding any contract for public work to specify the general rate of per diem wages for the workers needed to execute the contract. The awarding body must either specify this information in each of the call for bids, the bid specifications, and the contract itself, or include a statement in each of those documents that copies of the prevailing rate of per diem wages are on file at its office, and will be made available upon the request of an interested party.~~

~~This bill would additionally require the prevailing rate of per diem wages to be made available to the public on the Department of Industrial Relations' Internet site.~~

~~This bill would also make technical, nonsubstantive changes to these provisions.~~

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1    ~~SECTION 1. — Section 1773.2 of the Labor Code is amended~~  
 2    *SECTION 1. Section 27 of the Business and Professions Code*  
 3    *is amended to read:*  
 4    27. (a) Every entity specified in subdivision (b), on or after  
 5    July 1, 2001, unless otherwise authorized by the Department of  
 6    Information Technology pursuant to Executive Order D-3-99,  
 7    shall provide on the Internet information regarding the status of  
 8    every license issued by that entity in accordance with the  
 9    California Public Records Act (Chapter 3.5 (commencing with  
 10    Section 6250) of Division 7 of Title 1 of the Government Code)  
 11    and the Information Practices Act of 1977 (Chapter 1  
 12    (commencing with Section 1798) of Title 1.8 of Part 4 of Division  
 13    3 of the Civil Code). The public information to be provided on the  
 14    Internet shall include information on suspensions and revocations  
 15    of licenses issued by the entity and other related enforcement  
 16    action taken by the entity relative to persons, businesses, or  
 17    facilities subject to licensure or regulation by the entity. In  
 18    providing information on the Internet, each entity shall comply  
 19    with the Department of Consumer Affairs Guidelines for Access  
 20    to Public Records. The information ~~shall~~ *may* not include personal

1 information, including home telephone number, date of birth, or  
2 social security number. Each entity shall disclose a licensee's  
3 address of record. However, each entity shall allow a licensee to  
4 provide a post office box number or other alternate address, instead  
5 of his or her home address, as the address of record. This section  
6 shall not preclude an entity from also requiring a licensee, who has  
7 provided a post office box number or other alternative mailing  
8 address as his or her address of record, to provide a physical  
9 business address or residence address only for the entity's internal  
10 administrative use and not for disclosure as the licensee's address  
11 of record or disclosure on the Internet.

12 (b) Each of the following entities within the Department of  
13 Consumer Affairs shall comply with the requirements of this  
14 section:

15 (1) The Acupuncture Board shall disclose information on its  
16 licensees.

17 (2) The Board of Behavioral Sciences shall disclose  
18 information on its licensees, including marriage and family  
19 therapists, licensed clinical social workers, and licensed  
20 educational psychologists.

21 (3) The Dental Board of California shall disclose information  
22 on its licensees.

23 (4) The State Board of Optometry shall disclose information  
24 regarding certificates of registration to practice optometry,  
25 statements of licensure, optometric corporation registrations,  
26 branch office licenses, and fictitious name permits of their  
27 licensees.

28 (5) The Board for Professional Engineers and Land Surveyors  
29 shall disclose information on its registrants and licensees.

30 (6) The Structural Pest Control Board shall disclose  
31 information on its licensees, including applicators, field  
32 representatives, and operators in the areas of fumigation, general  
33 pest and wood destroying pests and organisms, and wood roof  
34 cleaning and treatment.

35 (7) The Bureau of Automotive Repair shall disclose  
36 information on its licensees, including auto repair dealers, smog  
37 stations, lamp and brake stations, smog check technicians, and  
38 smog inspection certification stations.

39 (8) The Bureau of Electronic and Appliance Repair shall  
40 disclose information on its licensees, including major appliance

1 repair dealers, combination dealers (electronic and appliance),  
2 electronic repair dealers, service contract sellers, and service  
3 contract administrators.

4 (9) The Cemetery Program shall disclose information on its  
5 licensees, including cemetery brokers, cemetery salespersons,  
6 crematories, and cremated remains disposers.

7 (10) The Funeral Directors and Embalmers Program shall  
8 disclose information on its licensees, including embalmers,  
9 funeral establishments, and funeral directors.

10 (11) The Contractors' State License Board shall disclose  
11 information on its licensees in accordance with Chapter 9  
12 (commencing with Section 7000) of Division 3. *In addition to*  
13 *information related to licenses as specified in subdivision (a), the*  
14 *board shall also disclose information provided to the board by the*  
15 *Labor Commissioner pursuant to Section 98.9 of the Labor Code.*

16 (12) The Board of Psychology shall disclose information on its  
17 licensees, including psychologists, psychological assistants, and  
18 registered psychologists.

19 (c) "Internet" for the purposes of this section has the meaning  
20 set forth in paragraph (6) of subdivision (e) of Section 17538.

21 SEC. 2. Section 1775 of the Labor Code is amended to read:

22 1775. (a) (1) The contractor and any subcontractor under  
23 ~~him or her~~ the contractor shall, as a penalty to the state or political  
24 subdivision on whose behalf the contract is made or awarded,  
25 forfeit not *less than ten dollars (\$10) and not* more than fifty  
26 dollars (\$50) for each calendar day, or portion thereof, for each  
27 worker paid less than the prevailing wage rates as determined by  
28 the director for the work or craft in which the worker is employed  
29 for any public work done under the contract by ~~him or her~~ the  
30 contractor or, except as provided in subdivision (b), by any  
31 subcontractor under ~~him or her~~ the contractor. ~~The~~

32 (2) (A) ~~The~~ amount of ~~this~~ the penalty shall be determined by  
33 the Labor Commissioner based on consideration of ~~both~~ all of the  
34 following:

35 ~~(1)–~~

36 (i) Whether the failure of the contractor or subcontractor to pay  
37 the correct rate of per diem wages was a good faith mistake and,  
38 if so, the error was promptly and voluntarily corrected upon being  
39 brought to the attention of the contractor or subcontractor.

40 ~~(2)–~~

(ii) Whether the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations. *Upon a determination that the contractor or subcontractor has a prior record of failing to meet its prevailing wage obligations, the penalty may not be less than twenty dollars (\$20) for each calendar day.*

(iii) *Upon a finding by the Labor Commissioner that a willful or deliberate violation of this subdivision has been committed, the penalty may be not less than thirty dollars (\$30) for each calendar day.*

~~The~~

(B) *The determination of the Labor Commissioner as to the amount of the penalty shall be reviewable only for abuse of discretion. The difference between the prevailing wage rates and the amount paid to each worker for each calendar day or portion thereof for which each worker was paid less than the prevailing wage rate shall be paid to each worker by the contractor or subcontractor, and the body awarding the contract shall cause to be inserted in the contract a stipulation that this section will be complied with.*

(b) If a worker employed by a subcontractor on a public works project is not paid the general prevailing *rate of* per diem wages by the subcontractor, the prime contractor of the project is not liable for any penalties under subdivision (a) unless the prime contractor had knowledge of that failure of the subcontractor to pay the specified prevailing rate of wages to those workers or unless the prime contractor fails to comply with all of the following requirements:

(1) The contract executed between the contractor and the subcontractor for the performance of work on the public works project shall include a copy of the provisions of Sections 1771, 1775, 1776, 1777.5, 1813, and 1815.

(2) The contractor shall monitor the payment of the specified general prevailing rate of per diem wages by the subcontractor to the employees, by periodic review of the certified payroll records of the subcontractor.

(3) Upon becoming aware of the failure of the subcontractor to pay his or her workers the specified prevailing rate of wages, the contractor shall diligently take corrective action to halt or rectify the failure, including, but not limited to, retaining sufficient funds

1 due the subcontractor for work performed on the public works  
2 project.

3 (4) Prior to making final payment to the subcontractor for work  
4 performed on the public works project, the contractor shall obtain  
5 an affidavit signed under penalty of perjury from the subcontractor  
6 that the subcontractor has paid the specified general prevailing rate  
7 of per diem wages to his or her employees on the public works  
8 project and any amounts due pursuant to Section 1813.

9 (c) The Division of Labor Standards Enforcement shall notify  
10 the contractor on a public works project within 15 days of the  
11 receipt by the Division of Labor Standards Enforcement of a  
12 complaint of the failure of a subcontractor on that public works  
13 project to pay workers the general prevailing rate of per diem  
14 wages.

15 ~~to read:~~

16 ~~1773.2. (a) The body awarding any contract for public work,~~  
17 ~~or otherwise undertaking any public work, shall specify the~~  
18 ~~general rate of per diem wages for each craft, classification, or type~~  
19 ~~of worker needed to execute the contract in each of the following~~  
20 ~~documents:~~

21 ~~(1) The call for bids for the contract.~~

22 ~~(2) The bid specifications.~~

23 ~~(3) The contract itself.~~

24 ~~(b) In lieu of specifying the rate of wages in each of the~~  
25 ~~documents described in paragraphs (1) through (3) of subdivision~~  
26 ~~(a), the awarding body may, in each of those documents, include~~  
27 ~~a statement that copies of the prevailing rate of per diem wages are~~  
28 ~~on file at its principal office, and shall be made available to any~~  
29 ~~interested party on request.~~

30 ~~(c) The prevailing rate of per diem wages shall be available to~~  
31 ~~the public on the Internet site of the Department of Industrial~~  
32 ~~Relations.~~

33 ~~(d) The awarding body shall cause a copy of the director's~~  
34 ~~determination of the prevailing rate of per diem wages to be posted~~  
35 ~~at each job site.~~